① Is this too oriented to R&D types for general use in NY?

② Is this definition so broad as to jeopardize enforceability?

AGREEMENT

③ Should this be a separate paragraph?

_____ is engaged in a position of trust and confidence in which he or she may use, observe, obtain, or develop confidential information of Philip Morris (Applicable Company). By reason of the nature of such duties, he or she will be provided with information and/or facilities and equipment which may result in discoveries, inventions, improvements or innovations useful to Philip Morris, its subsidiaries or affiliates. ①

It is to the mutual benefit of Philip Morris and its employees that Philip Morris protects its right to confidential information and obtains title to and the benefit of discoveries, inventions, improvements, innovations and other works developed by its employees; therefore, in consideration of employment or continued employment by Philip Morris (Applicable Company) ("the Company") or its subsidiaries or affiliates and other valuable consideration, the Company and the Employee agree:

1. The term "Confidential Information" for purposes of this Agreement means and includes any information, (including without limitation any formula, pattern, device, plan, process, or compilation of information in any medium including written or electronic) which ②

a) is or is designed to be used in the business of the Company or results from the research and development activities of the Company, or

③ b)

b) is private and confidential in that it is not generally known to the public including but not necessarily limited to business affairs, plans, organizational structure, research and development, financial data, personnel, legal strategies, information services including retrieval services, ~~etc.~~

information relating to

If the Employee is unsure as to whether any particular matter, document or information is confidential, the Employee shall ask appropriate management of the Company and abide by the Company's decisions and directives.

2. The Employee shall not, while so employed or afterward, use for his or her own benefit, disclose to or use for the benefit of any other person, firm or corporation, any confidential information.

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(4) Does application of a restrictive covenant to all exempt employees jeopardize enforceability

3. Any and all proprietary rights in any new or improved apparatus, process, formula, composition or product made, conceived or developed in the course of employment shall belong to the Company, shall be promptly disclosed to and assigned to the Company by the Employee. This provision is applicable regardless of whether such development is made alone or with others, during or outside of work hours, or on or off Company property, patentable or not, and reduced to practice or not. If patentable, the Employee will, upon request, execute, without cost to himself or herself, any United States or foreign patent applications and assignments transferring the same to the Company, which may be necessary to accomplish the foregoing, and thereafter will execute all documents and do all things requested by the Company to further the procurement of such patent or patents.

(1)

4. The Employee agrees, unless defined elsewhere in the Agreement, that all material subject to Copyright (and all mask works) he or she creates within the scope of his or her employment are works made for hire owned by the Company. The Employee also agrees to assign to the Company all right, title and interest, including all copyrights or any other copyrightable works he or she creates during his or her employment that relates to Company business (or which it may become engaged) or which derive from information gained during his or her employment. The Employee agrees to execute any documents necessary for the Company to memorialize, register, or maintain its ownership of such copyrights or mask works.

5. For eighteen (18) months following the termination of his or her employment regardless of the circumstances of the termination, the Employee shall not accept employment by or do any work for any competitor of the Company, an affiliate, parent or related Company engaged in the production, processing, marketing or sale of tobacco products or components of such products unless otherwise agreed to in writing by the Company. It is understood that the eighteen (18) month restriction on employment activities shall only preclude the Employee from providing services that:

(1)

a) pertain to products which compete with products manufactured, marketed or sold by the Company at the time employment is terminated; and

b) are performed in the United States and other geographic areas in which the Company, an affiliate, parent or related Company does business at the time employment is terminated.

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The Employee will notify any future employers and contractors of this Agreement and its restrictions. The Employee acknowledges that after his or her employment with the Company, he or she will be reasonably able to earn a livelihood without violating the terms of this paragraph "5."

6. The Employee will devote his or her entire normal working time to the business of the Company unless otherwise agreed to in writing by the Company. During the period of employment, the Employee will not independently engage in the same or similar business or research as that carried out by the Company or directly or indirectly, serve, advise or be employed by any individual, firm or corporation engaged in the same or similar line of business or research as that carried out by the Employee at the Company.

7. No change in the Employee's compensation or other terms of employment will affect the terms of this Agreement.

8. The Employee is an employee-at-will and may be terminated by the Company at any time, for any reason without notice.

9. All memoranda, notes, records, reports, photographs, drawings, plans, papers, computer programs, diskettes, tapes, slides or other documents made or compiled by or made available to the Employee during the course of employment, and any copies or abstracts thereof, whether or not they contain Confidential Information, are and shall be the property of the Company and shall be delivered to the Company by the Employee immediately upon termination of employment regardless of the reason for termination. The above is not intended to be necessarily inclusive and shall include any records whether in writing, electronically or mechanically created, ~~etc.~~ as maintained

10. The Employee represents that he or she has not at any time entered into any other agreement which would in any way affect, restrict or limit his or her employment by the Company or prevent full compliance with the terms of this Agreement except as listed below:

| (Name of Other Contracting Party or Employer) | (Address) |
|---|---|
| | |

| (Date of Such Agreement) | (Date of Termination of Such Agreement or of Last Employment) |
|---|---|
| | |



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If there is no such Agreement, write "None" above.

11. The Employee understands and acknowledges that use or disclosure of Confidential Information, failure to disclose or assign inventions or other works, or employment or engagement with competitors of the Company in violation of this Agreement would result in immediate and irreparable harm to the Company and its competitive position. The Employee thus acknowledges and agrees that the Company is entitled to preliminary and permanent injunctive relief in order to prevent or stop such violations, in addition to damages, costs, and other relief which may be appropriate.

12. At termination of employment, Employee agrees to return all Company property and agrees that he or she will conduct a diligent search and inquiry to locate all originals and all copies of any business records and property of Philip Morris which are or were subject to his or her custody or control, regardless of the sources from which such records were obtained; that he or she will return all such documents or property, if any, to Philip Morris; and, that he or she will certify to Philip Morris that to the best of his or her knowledge and belief all such documents and property have been returned.

13. If any provision or provisions of this Agreement shall be held to unenforceable by any court, the remaining provisions shall continue in full force and effect. The Employee and Company agree that those provisions should be and are reformed to the extent permitted by applicable law and expressly authorize the court to reform those provisions in that manner. This Agreement shall inure to the benefit of and be binding upon the Company, its successor and assigns and the Employee, Employee's heirs, executors and administrators. Any waiver of a breach of this Agreement shall not constitute a waiver of a future breach, whether of a similar or dissimilar nature.

14. This Agreement may not, on behalf of or with respect to the Company, be changed, modified, released, discharged, abandoned or otherwise terminated, in whole or part, except by any instrument in writing signed by an officer of the Company. This Agreement shall be governed by Virginia law.

15. This Agreement supersedes and nullifies any similar agreement which previously may have been executed by the Employee and Company.

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IN WITNESS WHEREOF the Employee has executed this Agreement this _____ day of _____ year of _____.

By_____ (SEAL)
(Signature)

_____
(Type or Print Employee's Name)

In presence of:

_____

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